No. 82-78

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

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SUPREME COURT, U.S.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

DONALD LEE SHIRLEY,
Respondent.

On Appeal from the Supreme Court
of California

REPLY OF PETITIONER TO MEMORANDUM FOR RESPONDENT OF 8 SEPTEMBER 1982

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IN THE SUPREME COURT OF THE UNITED STATES

THE PEOPLE OF THE STATE OF CALIFORNIA, Petitioner,	)	
v.	)	No. 82-78
DONALD LEE SHIRLEY, Respondent.	)	

REPLY OF PETITIONER
TO MEMORANDUM FOR RESPONDENT
OF 8 SEPTEMBER 1982

Petitioner confirms that, on August 17, 1982, respondent was acquitted of the criminal charges against him. Petitioner, however, does not believe such acquittal should render the matter moot.

The decision of the California Supreme Court in the Shirley case was meant to have and has had a practical effect beyond the Shirley case itself. The case will foreclose the future use of hypnosis in California and may effect retroactively cases where hypnosis was used before the decision. Thus, the People of this State remain aggrieved by all those constitutional defects present in the Shirley decision.

The acquittal of Mr. Shirley will not affect the vigor of advocacy in this matter. The briefing and argument in the California Supreme Court was in significant part handled by Mr. Ephraim Margolin for the California Attorneys for Criminal Justice (a respected statewide association of criminal defense attorneys). Indeed, Mr. Margolin was the author of Mr. Shirley's Opposition to Certiorari in this Court. This organization will clearly

continue to vigorously present the matters offered in their Opposition to Certiorari. (See Carroll v. Princess Anne (1968) 393 U.S. 175, 179; Roe v. Wade (1972) 410 U.S. 113, 125; Dunn v. Blumstein (1971) 405 U.S. 330, 333 fn. 2; Nebraska Press Association v. Stuart (1975) 427 U.S. 539, 546-547; see also Stern, Grossman, Supreme Court Practice, 5th ed., pp. 884-897.)

Respondent argues the passage of Proposition 8, an initiative dealing in part with significant changes in the rules of evidence in criminal cases, and the upholding of that initiative by the California Supreme Court in Brosnahan v. Brown (1982) ___ Cal.3d ___ (Calif. Supreme Ct. No. S.F. 24441, decided September 2, 1982) renders the continued validity of the California Supreme Court decision in the Shirley case problematical. It must be noted that the Brosnahan decision does not deal with the validity of any portion of Proposition 8, but rather deals only with the regularity of its passage. No case in this State has overturned the Shirley opinion.

For the foregoing reasons, petitioner submits the matter is not moot.

Respectfully submitted,

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PEOPLE OF THE STATE
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Petitioner,

v.

DONALD LEE SHIRLEY,
Respondent.

I, THE UNDERSIGNED, say: I am a citizen of the United States, over 18 years of age, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California, 92101.

I have served the within REPLY OF PETITIONER TO MEMORANDUM FOR RESPONDENT OF 8 SEPTEMBER 1982 as follows: To Alexander L. Stevas, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and nine copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing one copy in a separate envelope addressed for and to each addressee named as follows:

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HON. MASON L. FENTON, JUDGE

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CLERK OF THE COURT
Court of Appeal
Fourth District, Division Two
303 West Third Street, Room 640
San Bernardino, California 92401

CLERK OF THE COURT
Supreme Court
State of California
350 McAllister Street, Room 4050
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Each aforementioned envelope, with the postage prepaid, was sealed and deposited in the United States Mail by my at San Diego, California, on the fifteenth day of September, 1982. There is a delivery service by United States Mail at each place addressed above, and regular communication by United States Mail between the place of mailing and each place addressed above.

I declare under penalty of perjury that the foregoing is true and correct.

Fifteenth Day of September,
1982, at San Diego, California.

Steven McGee

STEVEN MCGEE